

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HOUSTON GRANITE AND MARBLE
CENTER, LLC,
Plaintiff,

v.

MESA UNDERWRITERS SPECIALTY
INSURANCE COMPANY,
Defendant.

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CIVIL ACTION NO.

**INDEX OF DOCUMENTS
FILED IN STATE COURT**

Document:

Date Filed:

- | | |
|--|-------------------|
| 1. Civil Process Request | November 25, 2015 |
| 2. Civil Case Information Sheet | November 25, 2015 |
| 3. Plaintiff's Original Petition and Requests for Disclosure | November 25, 2015 |
| 4. Service Affidavit | January 5, 2016 |
| 5. Defendant's Original Answer | January 11, 2016 |
| 6. Docket Sheet as of January 20, 2016 | |

Chris Daniel - District Clerk
Harris County
Envelope No: 7997279
By: SOLIS, ADILIANI A
Filed: 11/25/2015 4:07:00 PM

2015-71426 / Court 333

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING
FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: _____ CURRENT COURT: _____

TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): Plaintiff's Original Petition and Request for Disclosure

FILE DATE OF MOTION: 11/24/2015

Month/ Day/ Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME: Mesa Underwriters Specialty Insurance Company

ADDRESS: 2338 W. Royal Palm Rd., Suite J, Phoenix, AZ 85021 or wherever it may be found

AGENT, (if applicable): Corporation Service Company

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): citation

SERVICE BY (check one):

☐ ATTORNEY PICK-UP

☐ CONSTABLE

☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____

Phone: _____

☒ MAIL

☐ CERTIFIED MAIL

☐ PUBLICATION:

Type of Publication:

☐ COURTHOUSE DOOR, or

☐ NEWSPAPER OF YOUR CHOICE: _____

☒ OTHER, explain PLEASE MAIL CITATION TO OUR OFFICE. THANK YOU

2. NAME: _____

ADDRESS: _____

AGENT, (if applicable): _____

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): _____

SERVICE BY (check one):

☐ ATTORNEY PICK-UP

☐ CONSTABLE

☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____

Phone: _____

☐ MAIL

☐ CERTIFIED MAIL

☐ PUBLICATION:

Type of Publication:

☐ COURTHOUSE DOOR, or

☐ NEWSPAPER OF YOUR CHOICE: _____

☐ OTHER, explain _____

ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:

NAME: David P. Havins TEXAS BAR NO./ID NO. 09239700

MAILING ADDRESS: 6750 West Loop South, Suite 800, Bellaire, Texas 77401

PHONE NUMBER: 713 484-5514

area code

phone number

FAX NUMBER: 713 665-6818

area code

fax number

EMAIL ADDRESS: roxana@havinslaw.com

SERVICE REQUESTS WHICH CANNOT BE PROCESSED BY THIS OFFICE WILL BE HELD FOR 30 DAYS PRIOR TO CANCELLATION. FEES WILL BE REFUNDED ONLY UPON REQUEST, OR AT THE DISPOSITION OF THE CASE. SERVICE REQUESTS MAY BE REINSTATED UPON APPROPRIATE ACTION BY THE PARTIES.

INSTRUMENTS TO BE SERVED:

(Fill In Instrument Sequence Number, i.e. 1st, 2nd, etc.)

ORIGINAL PETITION

_____ AMENDED PETITION

_____ SUPPLEMENTAL PETITION

COUNTERCLAIM

_____ AMENDED COUNTERCLAIM

_____ SUPPLEMENTAL COUNTERCLAIM

CROSS-ACTION:

_____ AMENDED CROSS-ACTION

_____ SUPPLEMENTAL CROSS-ACTION

THIRD-PARTY PETITION:

_____ AMENDED THIRD-PARTY PETITION

_____ SUPPLEMENTAL THIRD-PARTY PETITION

INTERVENTION:

_____ AMENDED INTERVENTION

_____ SUPPLEMENTAL INTERVENTION

INTERPLEADER

_____ AMENDED INTERPLEADER

_____ SUPPLEMENTAL INTERPLEADER

INJUNCTION

MOTION TO MODIFY

SHOW CAUSE ORDER

TEMPORARY RESTRAINING ORDER

BILL OF DISCOVERY:

ORDER TO: _____
(specify)

MOTION TO: _____
(specify)

PROCESS TYPES:

NON WRIT:

CITATION

ALIAS CITATION

PLURIES CITATION

SECRETARY OF STATE CITATION

COMMISSIONER OF INSURANCE

HIGHWAY COMMISSIONER

CITATION BY PUBLICATION

NOTICE

SHORT FORM NOTICE

PRECEPT (SHOW CAUSE)

RULE 106 SERVICE

SUBPOENA

WRITS:

ATTACHMENT (PROPERTY)

ATTACHMENT (WITNESS)

ATTACHMENT (PERSON)

CERTIORARI

EXECUTION

EXECUTION AND ORDER OF SALE

GARNISHMENT BEFORE JUDGMENT

GARNISHMENT AFTER JUDGMENT

HABEAS CORPUS

INJUNCTION

TEMPORARY RESTRAINING ORDER

PROTECTIVE ORDER (FAMILY CODE)

PROTECTIVE ORDER (CIVIL CODE)

POSSESSION (PERSON)

POSSESSION (PROPERTY)

SCIRE FACIAS

SEQUESTRATION

SUPERSEDEAS

Chris Daniel - District Clerk
Harris County
Envelope No: 7997279
By: SOLIS, ADILIANI A
Filed: 11/25/2015 4:07:00 PM

CIVIL CASE INFORMATION SHEET (REV. 2/13)

CAUSE NUMBER (FOR CLERK USE ONLY)

2015-71426 / Court: 333

CAUSE NUMBER (FOR CLERK USE ONLY)

STYLED Houston Granite and Marble Center, LLC vs. Mesa Underwriters Specialty Insurance Company

(e.g., John Smith v. All American Insurance Co. In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet: Name: <u>David P. Havins</u> Email: <u>roxana@havinslaw.com</u> Address: <u>6750 W. Loop S., #800</u> Telephone: <u>713-484-5514</u> City/State/Zip: <u>Bellaire, TX 77401</u> Fax: <u>713-665-6818</u> Signature: <u>[Signature]</u> State Bar No: <u>09239700</u> [Attach additional page as necessary to list all parties]		Names of parties in case: Plaintiff(s)/Petitioner(s): <u>Houston Granite and Marble Center, LLC</u> Defendant(s)/Respondent(s): <u>Mesa Underwriters Specialty Insurance Company</u>		Person or entity completing sheet is: <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer DTPA <input checked="" type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input checked="" type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:		Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:			
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:			
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do not select if it is a family law case): <input checked="" type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000					

2015-71426 / Court: 333
 CAUSE NO. _____

HOUSTON GRANITE AND MARBLE
 CENTER, LLC

Plaintiff

VS.

MESA UNDERWRITERS SPECIALTY
 INSURANCE COMPANY

Defendant

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IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION
 AND REQUEST FOR DISCLOSURE**

NOW COMES, Plaintiff HOUSTON GRANITE AND MARBLE CENTER, LLC complains of Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY (hereinafter "Defendant") and respectfully shows the following:

I.

DISCOVERY

1.1 Plaintiff requests discovery to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

II.

PARTIES

2.1 Plaintiff HOUSTON GRANITE AND MARBLE CENTER, LLC is doing business at 9500 Hempstead Rd., Houston, Harris County, Texas.

2.2 Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY is an Insurance Company doing business in Texas and may be served with process by serving its registered agent Corporation Service Company at 2338 W. Royal Palm Rd., Suite J, Phoenix, AZ 85021 or wherever it may be found.

III.

JURISDICTION AND VENUE

3.1 The Court has jurisdiction over the controversy because the damages are within the jurisdictional limits of this Court.

3.2 Pursuant to §15.002 and §15.005 the Texas Civil Practice and Remedies Code, Venue is proper in Harris County, Texas because the cause of action occurred in Harris County, Texas.

IV. **FACTS**

4.1 On or about September 16, 2014, (“herein “date of loss”) Plaintiff sustained damages to certain granite and marble slabs that were broken on their premises at 9500 Hempstead Rd., Houston, Texas.

4.2 At the time of loss, Plaintiff was insured with MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY. Plaintiff had purchased an insurance policy from Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY, which had policy limits of \$450,000.00 per person per occurrence for property damages and coverage for loss of business in the amount of \$20,000.00.

4.3 The policy issued by Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY provides for coverage for the perils that occurred on Plaintiff’s premises. Plaintiff relied on their representations and warranties that the policy covered perils for the incident that occurred on his premises.

4.4 On October 11, 2014, Plaintiff notified MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY that he had sustained damages to certain granite and marble slabs that were broken as a direct result of a covered peril on his premises. The notice and proof of loss, included documents evidencing (1) numerous commercial itemized invoices evidencing losses for granite and marble in the sum of \$61,384.14; (2) freight invoices; (3) Property Loss Notice; (4) Houston Granite and Marble Center, LLC Account Listing; and (5) photographs evidencing the damage to Plaintiff’s granite and marble slabs.

4.5 On August 20, 2015, Plaintiff made a *demand* upon Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY for reimbursement of damages sustained in the sum of \$61,384.14 in accordance with the terms and conditions of the policy. The demand letter included (1) documents evidencing invoices for damage to the materials; (2) the cost of the materials; and (3) photographs depicting the damage to the materials.

4.6 Despite notice and proof of loss, Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY has refused to respond to Plaintiff's demand and/or make a good faith offer of settlement.

4.7 The claim has been assigned to Mr. Kip Quist, at Prodigy Assurance Adjusters, who is an insurance adjuster for Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY.

4.8 Plaintiff has fully complied with all of the conditions of the insurance policy and/or satisfied all conditions precedent prior to the institution of this suit.

V.

TEXAS INSURANCE CODE VIOLATIONS

5.1 Plaintiff incorporates and realleges the allegations of Paragraphs 4.1 through 4.8 inclusive, as if fully set forth verbatim.

5.2 Pursuant to Section §542.058 of the Texas Insurance Code, Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY has a duty to make a written reply to claims within sixty days of the demand.

5.3 Article §542.060 of the Texas Insurance Code, penalizes insurance companies that delay payment of benefits under insurance policies for failure to comply with the prompt payment requirements of the statute and may be held liable to pay the amount of the claim, plus damages consisting of 18 percent per annum of the amount of the claim and reasonable attorney fees.

5.4 Pursuant to §541.060, it is an unfair method of competition of an unfair or deceptive act or practice in the business of insurance to engage in the following unfair settlement practices with respect to a claim by an insured or beneficiary:

- 5.4.1 misrepresenting to a claimant, a material fact or policy provision relating to coverage at the time;
- 5.4.2 failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a) a claim with respect to which the insurer's liability has become reasonably clear; or b) failing to promptly provide to a policy holder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;
- 5.4.3 failing to affirm or deny coverage of a claim to a policyholder;
- 5.4.4 failing to tender the policy limits;
- 5.4.5 refusing, failing or unreasonably delaying a settlement offer under applicable underinsured motorist coverage provisions of the policy;
- 5.4.6 refusing to pay a claim when liability is clear and third party coverage is inadequate to compensate Plaintiff for his damages;
- 5.4.7 delaying or refusing settlement of a claim without a rational basis; and
- 5.4.8 advertising and representing that Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY claims process was "streamlined, stress-free and hassle-free".

VI. BREACH OF CONTRACT

6.1 Plaintiff incorporates and realleges the allegations of Paragraphs 4.1 through 4.8 inclusive, as if fully set forth verbatim.

6.2 At the time of the accident, Plaintiff was an eligible beneficiary and covered person within the terms of the policy issued and underwritten by Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY.

6.3 Defendant has breached the duties owed to Plaintiff under the policy of insurance in effect, and violated Sections §542.058 and §542.60 of the Texas Insurance Code, by one or more of the following acts and omissions, to wit:

- 6.3.1 In breaching the duties owed under the policy in effect;
- 6.3.2 In breaching the duty to negotiate plaintiff's claims;
- 6.3.3 In breaching the duty of good faith and fair dealing;
- 6.3.4 In breaching the duty to provide a written explanation for the denial of plaintiff's claim;
- 6.3.5 In breaching the duty to investigate plaintiff's claim within a reasonable period of time;
- 6.3.6 In breaching the duty to make a good faith offer of settlement;
- 6.3.7 In breaching the duty to pay claims under the policy in effect;
- 6.3.8 In breaching the duty to investigate plaintiff's claims;
- 6.3.9 In breaching the duty to timely investigate plaintiff's claims;
- 6.3.10 In breaching the duty to properly investigate plaintiff's claims;
- 6.3.11 In breaching the duty to properly handle plaintiff's claims;
- 6.3.12 In breaching the duty to evaluate plaintiff's claims;
- 6.3.13 In breaching the duty to timely evaluate plaintiff's claims;
- 6.3.14 In breaching the duty to make an offer of settlement and/or pay plaintiff's claims;
- 6.3.15 In breaching the duty to timely tender a good faith offer;
- 6.3.16 In misrepresenting the terms of the policy; and
- 6.3.17 In committing unfair settlement claim practices.

VII.

NEGLIGENCE

7.1 Plaintiff incorporates and realleges the allegations of Paragraphs 4.1 through 4.10 inclusive, as if fully set forth verbatim.

7.2 Plaintiff shows that Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY has negligently engaged in the following acts and omissions to act, to wit:

- 7.2.1 In failing to investigate plaintiff's claim within a reasonable period of time;
- 7.2.2 In failing to make a good faith offer of settlement;
- 7.2.3 In failing to make a prompt, fair and equitable settlement;
- 7.2.4 In failing to pay claims after liability has been reasonably clear;
- 7.2.5 In delaying benefits under the policy after liability;
- 7.2.6 In failing to properly investigate plaintiff's claims;
- 7.2.7 In failing to timely investigate plaintiff's claims;
- 7.2.8 In failing to adequately evaluate plaintiff's claims;
- 7.2.9 In failing to timely evaluate plaintiff's claims;
- 7.2.10 In failing to tender a settlement offer of plaintiff's claim;
- 7.2.11 In failing to make a full and complete investigation of plaintiff's claims;
- 7.2.12 In failing to negotiate plaintiff's claims; and
- 7.2.13 In engaging in unfair settlement acts and practices.

7.3 Plaintiff shows that each of the above and foregoing acts and omissions to act, either singularly or in combination with one another, constitute negligence, under the terms and conditions of the policy in effect.

VIII.

FRAUD

8.1 Plaintiff incorporates and realleges the allegations of Paragraphs 4.1 through 4.8 inclusive, as if fully set forth verbatim.

8.2 Plaintiff purchased a policy of insurance from Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY and relied on Defendant MESA UNDERWRITERS

SPECIALTY INSURANCE COMPANY's advertisements, representations and warranties that its insurance policy and services were superior to its competitors and that it would timely process, evaluate and pay its claims.

8.3 Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY made representations and warranties that claims would be evaluated and timely resolved.

8.4 Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY's acts, and omissions, and fraudulent misrepresentations described in paragraph 4.1 through 4.10 above resulted in economic injury to Plaintiff.

8.5 Plaintiff is entitled to and requests exemplary damages in an amount determined by the trier of fact to be fair and reasonable and consistent with the requirements of law, including Chapter 51 of the Civil Practice and Remedies Code.

IX.
REQUEST FOR DISCLOSURE

9.1 Pursuant to Rule 194.2 of the Texas Rules of Civil Procedure, Defendant is requested to disclose the information and/or materials described in Rule 194.2 of the Texas Rules of Civil Procedure within fifty (50) days from the date of service of Plaintiff's Original Petition.

X.
AUTHENTICATION OF DOCUMENTS

10.1 Plaintiff gives actual notice to Defendant and/or co-Defendant, if any, that any and all documents produced by Defendant during discovery may be used against the Defendant(s), at any pre-trial proceeding and/or trial of this matter without the necessity of authenticating the document. This notice is given pursuant to Rule 193.7 of the Texas Rules of Civil Procedure.

XI.
DAMAGES

11.1 Pursuant to TRCP 47 (c), Plaintiff seeks damages over \$50,000 but not more than \$75,000.00 for damages sustained while coverage was in effect.

11.2 Pursuant to TRCP, Plaintiff seeks exemplary damages for fraud and deceptive trade.

11.3 As a result of the incident that occurred, Plaintiff sustained property damages to marble and granite slabs that were broken on his premises.

11.4 As a direct and proximate result of the negligence of Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY's breach of contract and/or negligence in processing Plaintiff's claims, Plaintiff has sustained actual, exemplary and/or compensatory damages in excess of the minimum jurisdictional limits of this honorable court.

XII.

ATTORNEY FEES

12.1 Plaintiff has employed the undersigned attorney to file and prosecute this suit. As a direct result of Defendant's breach of the insurance contract, Plaintiff has incurred reasonable and necessary attorney fees for having to prosecute this complaint.

12.2 Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY has delayed payment of Plaintiff's claim for more than ninety days after it received all of Plaintiff's demand for a good faith offer of settlement, together with documents evidencing the cost of the materials.

12.3 Pursuant to Article §542.060 of the Texas Insurance Code and §38.001 of the Texas Civil Practice and Remedies Code, Plaintiff is entitled to recover reasonable and necessary attorney fees for the trial of this action, including any appeals to the Texas Court of Appeals and/or the Texas Supreme Court.

XIII.

STATUTORY PENALTIES

13.1 Pursuant to Article §542.060 of the Texas Insurance Code, Plaintiff is entitled to recover the additional sum of eighteen percent (18%) of the amount determined payable under the terms of the policy.

13.2 Plaintiff seeks statutory penalties for interest at the rate of eighteen (18%) per annum commencing from the date of the Plaintiff's demand for settlement.

XIV.
DEMAND FOR JURY

14.1 Plaintiff demands a trial by jury.

PRAYER

Plaintiff requests that Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY be cited to appear and answer, and that upon final trial, Plaintiff have judgment against Defendant for full amount of his actual, exemplary/punitive, statutory and/or compensatory damages, with pre-judgment and post-judgment interest, for costs of Court, and for such other and further relief, special and general, at law and in equity, to which he may be justly entitled.

Respectfully Submitted,

THE HAVINS LAW FIRM, L.P.

By

David P. Havins

State Bar No. 09239700

6750 West Loop South, Suite 800

Bellaire, Texas 77401

(713) 484-5514

(713) 665-6818 (fax)

*Attorney for Plaintiff Houston Granite and
Marble Center, LLC*

SERVICE AFFIDAVIT333RD JUDICIAL DISTRICT COURT OF HARRIS COUNTY,
TEXAS

CASE NO: TR # 73194330

HOUSTON TEXAS

COURT DATE:

County of

COURT TIME: 00:00:00

PLAINTIFF:HOUSTON GRANITE AND MARBLE CENTER
LLCDEFENDANTS:

MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY

2338 W ROYAL PALM RD SUITE J
PHOENIX, AZ 85021

The declarant, being duly sworn, states: I am fully qualified under Rule 4(d) Ariz.R.Civ.P. to serve process in this action, having been so appointed by the court; I received and served the following documents in the manner described below:

DOCUMENT TYPE: **CITATION (NON-RESIDENT); PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE**

PERSON(S) SERVED: MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY (Defendant)

PLACE OF SERVICE: USUAL PLACE OF BUSINESS

2338 W ROYAL PALM RD SUITE J
PHOENIX, AZ 85021

By delivering 1 SET(S) true copies to: MELONY YOON, SERVICE OF PROCESS COORDINATOR

SEX: F; AGE/DOB: 25; RACE: ASIAN; HEIGHT: 5'6"; HAIR: BLACK; EYES: BROWN;

Notes: MELONY YOON IS THE SERVICE OF PROCESS COORDINATOR FOR CORPORATION SERVICE COMPANY WHO IS THE STATUTORY AGENT FOR THE DEFENDANT AND IS AUTHORIZED TO ACCEPT SERVICE ON THEIR BEHALF.

FILE #: 125583

REF #: 2015008573 paid

DATE OF SERVICE: 12/22/2015

TIME OF SERVICE: 14:16

Next Action: No Further Action

I declare under penalty of perjury that the foregoing is true and correct.

Signed on the 5th day of January, 2016

FEES:	\$65.00	Service Fee
	\$65.00	Total

**AFFIANT'S SIGNATURE**

Tom Zollars

Process server licensed in Maricopa County

Subscribed and sworn to this date: 1/5/2016 9:33:14 AM

NOTARY PUBLICSUPERIOR PROCESS SERVICES, INC.
7701 E. Indian School Suite E
Scottsdale, Arizona 85251
(480) 429-6886

2015-71426

HOUSTON GRANITE AND MARBLE
CENTER, LLC
Plaintiff,

v.

MESA UNDERWRITERS SPECIALTY
INSURANCE COMPANY
Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

333rd JUDICIAL DISTRICT

**DEFENDANT MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY'S
ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant Mesa Underwriters Specialty Insurance Company ("Mesa") and
files this Original Answer as follows:

I.
GENERAL DENIAL

Pursuant to TEXAS RULE OF CIVIL PROCEDURE 92, Defendant Mesa generally denies each
and every, all and singular, of the allegations contained within Plaintiff's Original Petition, and
demands strict proof thereon by a preponderance of the credible evidence in accordance with the
Constitution and the laws of the State of Texas.

II.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff takes nothing
by this suit and that Defendant goes hence with its costs, without delay.

Respectfully submitted,

/s/ Stephen A. Melendi

Stephen A. Melendi

SBN 24041468

stephenm@tbmmlaw.com

Aaron G. Stendell

SBN 24073062

aarons@tbmmlaw.com

TOLLEFSON BRADLEY MITCHELL & MELENDI, LLP

2811 McKinney Avenue, Suite 250 West

Dallas, Texas 75204

Telephone: 214-665-0100

Facsimile: 214-665-0199

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on the following counsel of record pursuant to the Texas Rules of Civil Procedure on January 11, 2016:

David P. Havins
THE HAVINS LAW FIRM, L.P.
6750 West Loop South, Suite 800
Bellaire, Texas 77401
713-665-6818 (fax)
Attorney for Plaintiff

/s/ Stephen A. Melendi

Stephen A. Melendi

HCDistrictclerk.comHOUSTON GRANITE AND MARBLE CENTER LLC vs.
MESA UNDERWRITERS SPECIALTY INSURANCE
COMPANY

1/20/2016

Cause: 201571426 CDI: 7 Court: 333

DOCUMENTS

Number	Document	Post Jdgm	Date	Pgs
68507621	Defendant Mesa Underwriters Special Insurance Company's Original Answer		01/11/2016	2
68434022	Service Affidavit		01/05/2016	1
68029015	Plaintiff's Original Petition and Request for disclosure		11/25/2015	9
-> 68029016	Civil Case Information Sheet		11/25/2015	1
-> 68029017	Civil Process Request		11/25/2015	2